

KELLEY DRYE
COLLIER SHANNON

David E Frulla
Partner

April 30, 2007

VIA HAND DELIVERY

Jeff S Jordan, Esquire
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N W
Washington, D C 20463

Re: **MUR 5905**

Dear Mr Jordan

Enclosed please find the National Association of Social Workers (NASW) and NASW Political Action for Candidate Election (PACE) response to the complaint in the above-referenced matter under review. This response also is being submitted on behalf of Ms Jacqueline Steingold, as PACE treasurer, Ms Elizabeth J Clark, Ms Kathleen Waugh, Ms Carolyn I Polowy, and Ms Denise McKenzie.

If you should have any questions or require additional information, please do not hesitate to contact me at the above telephone number or my colleague, Corey Rubin, at

Sincerely,


David E Frulla

Enclosures
DEF/car

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2007 APR 30 P 4 46

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

**National Association of Social Workers;
National Association of Social Workers
Political Action for Candidate Election, and
Jacqueline Steingold, as Treasurer;
Elizabeth J. Clark, Executive Director;
Kathleen Waugh, Chief Financial Officer
Carolyn I. Polowy, General Counsel; and
Denise McKenzie, Controller.**

MUR 5905

INTRODUCTION

The National Association of Social Workers (NASW), the National Association of Social Workers Political Action for Candidate Election (NASW-PACE or PACE), Ms Jacqueline Steingold, as treasurer, Ms Elizabeth J Clark, Ms Kathleen Waugh, Ms Carolyn I Polowy, and Ms Denise McKenzie (collectively, the "Respondents"), respectfully submit this response to the complaint filed by Ms Ikeita Cantú Hinojosa

Except where noted below, Respondents request that the Federal Election Commission (FEC) find no reason to believe pursuant to 11 C F R § 111.9(b) that the Respondents have committed violations of the Federal Election Campaign Act of 1971, 2 U S C § 431, *et seq* , as amended (FECA or the Act), or FEC regulations. Moreover, because there is no evidence of wrongdoing by any individual respondent, Respondents respectfully request that the individual respondents immediately be dismissed from this matter. As to one remaining allegation regarding several late transfers of political contributions from NASW to the PACE account, Respondents request pre-probable cause conciliation.

NASW takes allegations of mismanagement and impropriety very seriously. For this reason, NASW, through a review committee established by the NASW Board of Directors,

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2007 APR 30 P 4 46

29044242073

retained Kelley Drye & Warren (KDW) to address Ms Hinojosa's allegations NASW sought to address these serious, albeit misplaced, charges independent of and prior to this FEC action

Because most of the complainant's charges allege financial mismanagement and irregularities, KDW retained the services of a respected forensic accounting firm, Financial Corporate Legal Advisors, Intl , Inc (FCL Advisors) FCL Advisors reviewed and tested each of the allegations in Ms Hinojosa's FEC complaint In addition, because of the nature of Ms Hinojosa's claims, FCL Advisors conducted a general, thorough analysis of NASW and PACE financial data for the period January 1, 2006, to December 31, 2006 ¹

Regarding its general review, FCL Advisors undertook to, among other things (1) review the PACE general ledger for any evidence of anomaly, error, or financial irregularity, (2) establish the propriety of cash disbursements reported on all PACE FEC disclosure reports filed during the period in question by verifying all disbursements in the PACE general ledger, which disbursements were then tied to checks written out of the PACE operating account, (3) test the validity of the PACE general ledger by reviewing bank reconciliations for the period in question, and (4) perform an analysis of PACE unitemized check-off contributions reported to the FEC, including verifying the propriety of reporting unitemized check-off contributions by tracing amounts reported to actual deposits and to the related bank reconciliations for the period in question See FCL Advisors PACE Report, at 1 – 2, April 25, 2007 (FCL Advisors report), attached hereto as Exhibit 1

¹ The *curriculum vitae* of the FCL Advisors principals who undertook this review, Michael Mulligan, J D , C P A , and James Kiley, C P A , are attached as Exhibits 2 and 3 to their report, which is attached hereto as Exhibit 1

29044242075

With the exception of four late transfers of member contributions from NASW to PACE, none of which was more than 30 days late, FCL Advisors concluded that Ms Hinojosa's campaign finance-related claims are utterly without merit

More specifically, the findings by FCL Advisors confirm that the allegations in Ms Hinojosa's complaint are primarily based on her fundamental lack of understanding of basic accounting and, in particular, of the NASW and PACE accounting methods. Most seriously, however, it appears to be Ms Hinojosa's own failures to properly manage PACE funds and report accurately to the PACE trustees that led to her FEC complaint, which, along with Ms Hinojosa's allegations against NASW staff, reflects a pattern of jumping to conclusions and accusing others of serious wrongdoing, without having the facts to support those allegations

BACKGROUND

Before turning to Ms Hinojosa's specific allegations, it may be instructive to provide some background regarding PACE and the events that ultimately led to Ms Hinojosa making her allegations.²

² In addition to the FEC complaint, Ms Hinojosa submitted a vast array of undifferentiated materials containing unsworn allegations that are either outside the FEC's jurisdiction, such as her employment-related claims and desk tampering charges (which were taken very seriously but never substantiated), or that do not represent violations of law. For instance, with regard to an NASW donation to *Vote Kids*, a group organized pursuant to section 501(c)(4) of the Internal Revenue Code, Ms Hinojosa questions whether NASW can make such a donation because "Department of Labor standards deem it illegal." See Hinojosa draft letter addressed to FEC, at 4, October 11, 2006 (attached to her FEC complaint). It is, however, entirely permissible for NASW, a trade association formed pursuant to section 501(c)(6) of the Internal Revenue Code, to donate funds to a section 501(c)(4) organization.

Moreover, in her complaint and October 11, 2006, draft letter addressed to the FEC, Ms Hinojosa makes numerous references to being prohibited from writing down her concerns or raising questions with the accounting staff, the implication being that she was being told to "keep quiet" about improprieties. This appears to be an intentional mischaracterization by Ms Hinojosa, evidenced by the fact that she omits from her complaint the emails which explain why senior management instructed her to discontinue contacting the accounting staff. Ms Hinojosa

29044242076

PACE was formed almost thirty years ago and is funded almost entirely by member contributions. As a matter of policy, PACE reimburses NASW for virtually all PACE administrative expenses incurred on its behalf, including its share of rent, staff salaries, benefits, and administrative overhead. While Ms. Hinojosa was the NASW staff person most responsible for the day-to-day activities of PACE, PACE is supervised by an all-volunteer Board of Trustees (the PACE board), on which sits the PACE treasurer, Ms. Jacqueline Steingold. The PACE board generally meets at least four times a year, either in person or telephonically. At these meetings, the trustees approve PACE budgets and political contributions, and receive reports on various PACE activities and projects.

When Ms. Hinojosa first raised her allegations in a September 15, 2006, memorandum, she was a relatively new employee, having joined NASW in January of that year. According to her Job Description Statement, Ms. Hinojosa's responsibilities included providing "substantive and organizational direction to NASW's government relations, political, and legislative affairs, and candidate fundraising units." See Job Description Statement, attached hereto as Exhibit 6. Ms. Hinojosa performed these functions, and she also was responsible for recommending to the PACE board to whom PACE should make contributions. In addition, Ms. Hinojosa's job

(continued)

was not placed under these restrictions to prevent her from raising legitimate concerns regarding impropriety or mismanagement at NASW. The restrictions were implemented to curtail Ms. Hinojosa from continuing to make unfounded and undeserved written and oral accusations of reporting errors, financial mismanagement, and illegal conduct directed at the NASW accounting staff. Indeed, it appears that Ms. Hinojosa selectively excluded emails and other materials from her complaint that might have undercut her allegations; accordingly, Respondents have attached a number of emails as exhibits to this response to ensure the FEC has access to a complete record. See email from Polowy to Hinojosa, October 12, 2006, attached hereto as Exhibit 2, email from Waugh to Clark and Polowy, October 11, 2006, attached hereto as Exhibit 3, email from Clark to Hinojosa, October 11, 2006, attached hereto as Exhibit 4, and email from McKenzie to Waugh, October 11, 2006, attached hereto as Exhibit 5. Such unfounded and harshly-worded emails from Ms. Hinojosa to staff damaged morale and created other issues that management, quite appropriately, had to address.

responsibilities included keeping the PACE board informed regarding PACE's financial position and PACE political activities

Ms Hinojosa's September 15 memorandum was written shortly after she learned from NASW accountants that PACE had fewer funds available to make contributions than Ms Hinojosa apparently had thought. Put simply, Ms Hinojosa mistakenly believed that the PACE July 2006, FEC report "cash-on-hand" figure represented the amount of PACE funds Ms Hinojosa could commit to candidates and committees. See Memorandum from Hinojosa to Waugh, September 15, 2006, attached hereto as Exhibit 7. See also Memorandum from Waugh to Clark, October 6, 2006, attached hereto as Exhibit 8. PACE, however, had various outstanding obligations that had accrued or would accrue but that were not reflected on the FEC report, including PACE distributions due to PACE state chapter political committees (which, over an election cycle can represent several hundred thousand dollars) and PACE administrative expenses due to NASW. Also, at that particular time, it appears that Ms Hinojosa had the PACE trustees approve an \$84,000 expenditure for field organizers that had not been included in PACE's budget. See email from McKenzie to Clark and Waugh, September 20, 2006, attached hereto as Exhibit 9. Each of these obligations had the effect of reducing the funds PACE had available to make political contributions, regardless of the cash-on-hand figure reported to the FEC, a concept Ms Hinojosa could not seem to grasp. See FCL Advisors report, at 5.

Moreover, prior to learning of the actual amount of funds available for contribution activity, Ms Hinojosa and/or her staff committed thousands of additional dollars in contributions to various candidates and committees, and then sought approval to make those contributions from the PACE trustees at the June 27, 2006, PACE trustee meeting. See PACE Trustee

Meeting Minutes, June 27, 2006, attached hereto as Exhibit 10 *See also* email from Julie L Trute to Hinojosa, October 10, 2006, attached hereto as Exhibit 11³

Only after receiving approval from the PACE trustees to make the contributions did Ms Hinojosa and/or her staff check with the NASW accounting department regarding the availability of funds *See* email from Trute to McKenzie, September 14, 2006, attached hereto as Exhibit 12 *See also* email from McKenzie to Waugh, September 20, 2006, attached hereto as Exhibit 13 Shortly after Ms Hinojosa discovered that PACE had fewer funds available for contributions than she had thought, and just two days after the September 2006, PACE board meeting, she submitted her September 15, 2006, memorandum, in which she stated that she was "very concerned and confused" regarding the amount of funds that she was told was "in the NASW-PACE account," and that she "hoped it was an accounting error " Ms Hinojosa went on to state that, "[u]nless someone is removing funds from the political action committee account we do not believe it is possible that \$45,000 could be our present balance " *See* Exhibit 6, at 2 In Ms Hinojosa's October 11, 2006, draft letter addressed to the FEC, and in her FEC complaint, she goes further, alleging both "financial mismanagement" and "schemes to funnel money " *See* Hinojosa draft letter addressed to FEC, October 11, 2006 (attached to her FEC complaint), and Hinojosa FEC complaint, at 4

Ms Hinojosa provides no substantiation for these claims, however, either to NASW in her September 15, 2006, memorandum, her October 11, 2006, draft letter addressed to the FEC, or her FEC complaint itself On the contrary, Ms Hinojosa's FEC complaint is replete with conclusory statements and unsubstantiated surmise (using phrases such as "it is my

³ Ms Trute, former NASW Senior Political Action Associate, was hired in April 2006, and acted, in effect, as Ms Hinojosa's deputy

29044242079

understanding " and "it appears that " without citing to any evidence), fueled, apparently, by her own very evident misunderstanding of the facts

In fact, on page 3 of her complaint, with regard to the accounting methods used by PACE and NASW, Ms Hinojosa admits that, "I am not sure what all of this means "

After reviewing literally every PACE disbursement for 2006, FCL Advisors concluded that Ms Hinojosa indeed did not understand the basic accounting principles underlying many of the allegations in her complaint For instance, FCL Advisors' report states

[w]ith regard to Ms Hinojosa's ninth allegation/uncertainty regarding cash versus accrual accounting, FCL believes the question itself reflects a lack of basic accounting understanding that is reflected in many of her other assertions With regard to Ms Hinojosa's further allegations, FCL finds that they reflect a lack of understanding of fundamental accounting concepts (e g , cash versus accrual accounting), and that they are not substantiated upon a thorough examination of the underlying financial data

FCL Advisors report, at 4, 5

Indeed, despite several attempts by the senior accounting staff to explain to her the difference between accrual and cash-based accounting, Ms Hinojosa appears to be, at best, very confused as to the basic accounting methods used by NASW and PACE See, for example, email from McKenzie to Hinojosa, September 26, 2006, attached hereto as Exhibit 14 At worst, Ms Hinojosa has intentionally mischaracterized facts and statements allegedly made by NASW staff to avoid taking responsibility for her own mistakes in over-committing PACE funds and seeking approval of her commitments to candidates from the PACE trustees that Ms Hinojosa must have realized PACE would be unable to make ⁴ In either event, the FEC should find "no reason to believe" regarding all but one of her many claims

⁴ Regarding Ms Hinojosa's credibility, it should be noted that she alleges that NASW's outside auditor, Grant-Thornton, "verified" her claims and "recommended" that senior staff be put on administrative leave See Hinojosa FEC Complaint, at 4 Ms Hinojosa's rather grandiose

RESPONSE TO THE CAMPAIGN FINANCE RELATED ALLEGATIONS

Ms Hinojosa makes numerous campaign financed related allegations in her complaint. After a thorough review, FCL Advisors determined that all are unfounded, with the exception of four untimely transfers of PACE contributions from NASW. FCL Advisors' report, detailing its methods and conclusions, is attached hereto as Exhibit 1. This response will address each allegation in the complaint in turn.

All Contributions Were Deposited by NASW into PACE

Ms Hinojosa alleges that NASW failed to forward contributions from members intended for deposit into the PACE account. After making this unsubstantiated allegation, Ms Hinojosa implies that both the general counsel and acting controller told her this, stating that "it's a wash because NASW-PACE owes NASW \$30,000 in administrative expenses." Hinojosa FEC Complaint, at 2.

Contrary to Ms Hinojosa's charge, however, FCL Advisors found no evidence that funds contributed to PACE were not deposited into PACE. Specifically, FCL Advisors determined, "that all unitemized contributions were ultimately deposited into a PACE account in the proper amount and properly reported on Forms FEC 3X." FCL Advisors report, at 2. Moreover, and,

(continued)

claims regarding Grant-Thornton are, however, totally inaccurate. Grant-Thornton did not verify any of Ms Hinojosa's allegations or recommend that the individuals named by Ms Hinojosa be placed on administrative leave. According to Grant-Thornton, its auditor informed the NASW audit committee while in executive session of Ms Hinojosa's October 11, 2006, letter addressed to the FEC, suggested that the committee undertake an independent review to assess these claims and consider retaining outside counsel. See letter from Grant-Thornton to Ms Josefina Ahumada, NASW Treasurer, Compliance Officer, and Chair, NASW Audit Committee, February 21, 2007, attached hereto as Exhibit 15. Thus, the record only reveals that the Grant-Thornton audit team did not, and most likely could not, dismiss Ms Hinojosa's many claims, going to fundamental accounting and financial issues, out of hand. Nor, as NASW's long-time auditors, could that firm undertake a forensic review.

again, reflecting on Ms Hinojosa's credibility, neither the acting controller nor the general counsel had the alleged conversation with her

There is, however, an email included in the documents attached to Ms Hinojosa's complaint, from Ms Trute to Ms Hinojosa, in which Ms Trute references a conversation she had with Mr Zion Amir, NASW's and PACE's bookkeeper Ms Trute states

I was very shocked and concerned when Zion explained to me that we only have about \$45,000, and that the money coming in from our PACE members basically won't count to our bottom line total He explained the \$30,000 we receive every month is considered a "wash" because PACE needs to pay NASW for administrative overhead costs, salaries, etc The part that concerns me the most is that our PAC is member funded How are we going to rebuild up our PACE account if our PACE members don't reach our PACE account?

Email from Trute to Hinojosa, September 15, 2006, attached hereto as Exhibit 16

It would appear that Ms Trute misinterpreted Mr Amir's comments, and that Ms Hinojosa likewise interpreted Ms Trute's conversation with Mr Amir to mean that NASW was retaining PACE contributions in order to cover amounts due to NASW from PACE Such an interpretation, however, illustrates Ms Hinojosa's confusion about the underlying facts Mr Amir did not state that NASW member contributions were not being deposited into PACE Mr Amir was explaining that, due to administrative expenses incurred by PACE, member contributions to PACE would not be available for political contributions because PACE will be required to reimburse NASW for those expenses, leaving no funds for contributions Indeed, Ms Hinojosa's allegation is completely undercut by FCL Advisors' determination that all PACE contributions were deposited into PACE See FCL Advisors report, at 2

When Ms Hinojosa raised her allegations regarding alleged mismanagement of PACE funds, Ms McKenzie, the acting controller, attempted to explain to Ms Hinojosa why the FEC "cash on hand" figure does not reflect the amount of contributions Ms Hinojosa and her staff

could promise to candidates Ms McKenzie also explained that the FEC requires that disclosures reflect cash-based accounting See, for instance, Exhibit 13 For internal accounting purposes, however, PACE uses accrual-based accounting so that PACE can maintain enough funds on-hand to meet future obligations NASW itself also uses accrual-based accounting Despite this explanation, Ms Hinojosa continued to assert that the difference in the reported cash-on-hand figure and the amount available to PACE was due to "mismanagement," or worse, a "scheme to funnel money," despite the total lack of any such evidence See Hinojosa FEC Complaint, at 4

All PACE Administrative Expenses Were Accurately Reported to the FEC

Ms Hinojosa alleges in her complaint that PACE's administrative overhead averages about \$6,600 or so each month, but that "[d]espite this average, it appears that NASW counted NASW's administrative overhead as almost \$22,000 in May 2006 and \$31,000 in August 2006 " Hinojosa FEC Complaint, at 2

The figures cited by Ms Hinojosa are incorrect As PACE's FEC reports show, and as confirmed by FCL Advisors, administrative expenses attributable to PACE regularly exceed \$6,600 per month FCL Advisors reviewed PACE administrative expenses as reported to the FEC against the internal accounting of these expenses and found no instance where administrative expenses were not accurately reported to the FEC In addition, FCL Advisors tested the administrative expense allocations and found them to be "both reasonable and consistent with prior periods in all material respects " See FCL Advisors report, at 3

Ms Hinojosa further alleges that PACE is charged by NASW for administrative overhead

in two separate categories the 10% from NASW member donations and through something called the "PACE Education Fund " It is unclear why these two

separate categories exist and which NASW-PACE administrative expenses are billed to which category, but both categories go directly to NASW automatically through the NASW Accounting Department with no sign-off or approval from me as Assistant Treasurer or Jacqueline Steingold as Treasurer of NASW-PACE

Hinojosa Complaint, at 2

By making this allegation, Ms Hinojosa has demonstrated her lack of understanding of the basic accounting aspects of the political committee for which she had significant responsibility For each dollar contributed to PACE, PACE retains forty-five percent, sends forty-five percent back to its state chapters, and retains ten percent as an administrative fee That ten percent is not, as Ms Hinojosa alleges, used to pay specific administrative expenses to NASW The ten percent is a fee against contributions received by PACE, but then returned to NASW as an administrative cost for handling the contributions See FCL Advisors report, at 3 Any specific administrative expenses paid by PACE to NASW, for example, for PACE staff salaries or other overhead such as benefits, rent, or utilities, is paid by PACE to NASW, separate and apart from the ten percent administrative fee

The "Education Fund" is the term PACE had used for many years on its FEC reports to indicate aggregate PACE administrative expenses The term recently was identified by an FEC Reports Analysis Division analyst as ambiguous, and from that point forward, PACE more specifically itemized PACE administrative payments in its FEC reports FCL Advisors examined PACE administrative expenses, however, including those that had been reported under the education fund designation, and found that PACE had accurately reported those expenses to the FEC, and had properly accounted for them in PACE and NASW internal records *Id*⁵

⁵ FCL Advisors did note that "the presentation of expenditures was changed from a single line item ("education fund expense") to an itemized breakdown of all of its components starting June 2006 The methodology for calculating and accumulating the costs however did not change and was appropriate before and after the presentation change " FCL Advisors report, fn 1

Finally, on this issue, Ms Hinojosa alleges that "[i]t appears that expenses incurred during the last fiscal year are not being reported to the FEC until this fiscal year" This is true, and the mere fact that the complainant has asserted this as an allegation points up the deficiencies in her understanding of PACE accounting Because the FEC requires a committee to report expenses when paid, not when incurred, expenses incurred on behalf of PACE in May 2006 may not be reimbursed by PACE until August 2006 This is, however, entirely permissible and proper As stated by FCL Advisors, "Because NASW maintains its books on an accrual basis, and the FEC reports are prepared on a cash basis, it is normal and customary that the payment would follow the incurrence of the related expense (which we found to be universally and appropriately the case)" FCL Advisors report, at 4

The Treasurer or her Agents Approved all PACE Disbursements

Ms Hinojosa has alleged that neither she nor Jacqueline Steingold, the PACE treasurer, approved of various disbursements made by PACE, including payments for administrative expenses and a payment for pension expenses

Like many organizations, PACE utilizes a board – in this case, the PACE Board of Trustees – to make disbursement and other decisions regarding PACE Ms Steingold, the PACE treasurer, is a PACE trustee and sits on the PACE board As previously noted, the PACE board generally meets at least four times a year, either in person or telephonically, and Ms Steingold participated in each of the four meetings that occurred in 2006 Contrary to Ms Hinojosa's allegations, at the beginning of each fiscal year, the trustees receive and approve an expense budget, which includes various line items, including salaries, staff benefits, travel, occupancy, telephone, office supplies, printing, postage, subscriptions, and various other expense types Trustees also annually receive a PACE Statement of Financial Position, which lists PACE cash,

investments, accounts receivable, assets, and liabilities PACE trustees also are required to approve disbursements to candidates, either on an individual candidate-basis, or as a block, with discretion for PACE staff to make candidate-specific contribution decisions Such an arrangement for the approval of disbursements complies with the requirements set forth in 11 C F R § 102 7(c)

Furthermore, Ms Hinojosa is incorrect when she states that administrative expenses "go directly to NASW automatically through NASW Accounting Department with no sign-off or approval from me as Assistant Treasurer or Jacqueline Steingold as Treasurer of NASW-PACE " While it is true that the trustees do not vote on each specific disbursement for administrative expenses to be paid each month, the Board of Trustees, of which Ms Steingold is a member, approves the PACE expense budget, which sets out, for the fiscal year, estimated PACE administrative expenses to be paid to NASW For the trustees to vote on each and every specific administrative disbursement every month would be impractical and a significant and unnecessary burden on the trustees, each of whom is a volunteer

Ms Hinojosa also appears to misunderstand her role as assistant treasurer FEC regulations do not require the assistant treasurer's approval for disbursements, and neither NASW nor PACE had made the approval of disbursements part of Ms Hinojosa's responsibilities

Moreover, Ms Hinojosa is incorrect when she asserts that NASW "removed \$27,000 from NASW-PACE" to help pay for the NASW pension PACE, like each NASW-affiliated entity, was required in 2006 to help defray NASW pension liabilities As explained above, the PACE Board of Trustees approve an administrative budget which includes the payment of PACE

staff benefits, of which the pension expense is a part. In addition, FCL Advisors reviewed this payment and determined that it was reasonable and permissible. *Id*

Finally, Ms. Hinojosa's allegation that Ms. Steingold has "not been allowed to fully perform her role," is one of Ms. Hinojosa's more ironic claims. As noted, PACE Treasurer Steingold is on the PACE Board of Trustees, and Ms. Steingold attended and participated in each meeting in 2006, as did Ms. Hinojosa. Prior to each meeting, each PACE trustee is provided a detailed agenda and supporting materials, much of which is prepared by Ms. Hinojosa or her staff. Indeed, one of Ms. Hinojosa's primary responsibilities was keeping the trustees informed of the PACE financial position and of other issues related to PACE. Ms. Hinojosa was free to raise any issue with trustees, including with Ms. Steingold, as treasurer, either in writing or during the meeting. On numerous occasions, she did just that. In fact, it is Ms. Hinojosa's failure to check with NASW accounting staff regarding the PACE financial position prior to seeking approval from the trustees for several hundred thousand dollars in contributions that ultimately led to Ms. Hinojosa's allegations of "mismanagement." It is quite possible that, rather than a sincere belief that violations occurred, Ms. Hinojosa is trying to divert attention from the substantial error committed by her and her staff in promising thousands of dollars in contributions to candidates, and then seeking the trustees' approval for those contributions, only to find that PACE could not fulfill those commitments and meet its other obligations.

Late Transfers of Member Contributions

FCL Advisors determined that, "on four occasions, due to personnel vacancies and absences and/or fiscal year-end closing administrative burdens, NASW failed to timely remit payments to PACE (i.e., they were not deposited within the 30 day required period)." FCL Advisors report, at 2 (emphasis in original)

Specifically, the four late transfers were (1) June 2005 contributions (made approximately 26 days late), (2) June 2006 contributions (made approximately 15 days late), (3) July 2006 contributions (made approximately 30 days late), and (4) December 2006 contributions (made approximately 14 days late) With respect to the December 2006 contributions, FCL Advisors stated that while it determined this transfer to be "technically late, we noted that the check date was January 4, 2007 (timely), but because it was not timely mailed (due to a sick leave issue), we found that the item is technically not a deposit in transit and thus should be considered a late deposit " FCL Advisors report, fn 2 ⁶

NASW understands that this is an issue that must be corrected, and has, in fact, already taken steps to ensure that accounting burdens or other workload factors at the close and start of the fiscal year do not interfere with its ability to make timely transfers For instance, even before receiving notice of this FEC complaint, NASW began using wire transfers to effect transfers of PACE contributions This step alone should significantly reduce the possibility of a transfer delay The Respondents respectfully request that the FEC enter pre-probable cause conciliation with respect to these apparently late transfers

⁶ FCL Advisors also noted

six other instances in the months of May, July, August, September and October of 2005, along with one in October of 2006 in which the deposit was prepared and mailed on or before the 30 day deadline Even though the amount was not credited to the PACE account until after the end of the thirty days, because the items are deposits in transit, included on the bank reconciliation as such, and correspondingly credited to the PACE account no later than four business days of the close of the 30 day period, FCL found that these were not exceptions

FCL Advisors report, fn 3

CONCLUSION

Except where noted, Ms Hinojosa's campaign finance-related claims are without basis in fact. These allegations have, however, provided NASW and PACE the opportunity to review some of their internal procedures. They have taken a number of steps to improve the administration and operation of PACE and are actively examining other opportunities for improvement going forward.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Rubin", with a long horizontal line extending to the right.

David E. Rubin
Corey A. Rubin

Kelley Drye Collier Shannon
Counsel for the Respondents